

**Exhibit A:**

**Subpoena**



Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000 / Columbus, Ohio 43215-4213 / Tel: 614.221.2838 / Fax: 614.221.2007 / [www.taftlaw.com](http://www.taftlaw.com)  
Cincinnati / Cleveland / Columbus / Dayton / Indianapolis / Northern Kentucky / Phoenix

Leon D. Bass, Esq.  
614-334-7192  
[copyright92@taftlaw.com](mailto:copyright92@taftlaw.com)

June 14, 2013

VIA Certified Mail

**WideOpenWest**  
**ATTN: Custodian of Records**  
**7887 East Belleview Avenue, Suite 1000**  
**Englewood, CO 80111**

**c/o CSC-Lawyers Incorporating Service (Corporation Service Company)**  
**50 West Broad Street, Suite 1800**  
**Columbus, OH 43215**

RE: Subpoena for Records and Court Order  
Civil Action No. 2:13-cv-00539 - U.S. Federal Court for the Southern District of Ohio

**\*\*\*Time Sensitive Information\*\*\***

**Response Deadline: 7/8/2013**

Dear Custodian of Records:

Please find the enclosed subpoena and Court Order (attachment B to Subpoena) authorizing the subpoena, along with an attached list of IP addresses and related information (attachment A). In accordance with our duty under Rule 45 and in order to reduce the administrative burden and cost of this production we have provided an excel spreadsheet containing IP addresses for which we are requesting customer identification information. We can email you a digital copy of the file upon request to **Kelly Kemper at [kkemper@taftlaw.com](mailto:kkemper@taftlaw.com)** or you can download it here:

**<https://www.dropbox.com/s/0ya9bn05gq6ly38/539-WOW.xlsx>**

Additionally, we are willing to discuss ways that we can assist you in attempting to develop a system to ease the burden of compliance for your company. Please let us know if there is anything else that we can do to that end.

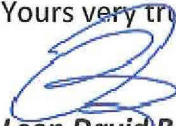
WideOpenWest

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We would be appreciative if you could provide, in digital form, using the spreadsheet mentioned above: the names, email addresses, mailing addresses, telephone numbers and MAC addresses for the IP address as of the dates and time on Attachment A. We would be happy to receive this information by email at **copyright92@taftlaw.com**. You can simply enter them into the spreadsheet provided.

Thank you very much for assisting us with this request. We look forward to working with you. Please feel free to contact **Elizabeth McCarthy** at **614-334-7192** or **copyright92@taftlaw.com** or me directly if you have any questions or concerns.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'Leon David Bass', is positioned above the printed name.

**Leon David Bass**

Attorney At Law

Enclosures:    Subpoena  
                  Attachment A (list of IP Addresses)  
                  Court Order

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

TCYK, LLC

*Plaintiff*

v.

Does 1-98

*Defendant*

Civil Action No. 2:13-cv-00539

(If the action is pending in another district, state where:

District of

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: **WideOpenWest**  
**7887 East Bellevue Avenue, Suite 1000, Englewood, CO 80111**

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

In accordance with the attached court order, please provide all records and information sufficient to identify the people or entities whose Internet Protocol Address ("IP Address") are listed in Attachment A to this Subpoena including the following: personal and business names, any and all addresses, any and all telephone numbers, any and all e-mail addresses, and Media Access Control addresses ("MAC Addresses"). Please email the requested information to [copyright92@taftlaw.com](mailto:copyright92@taftlaw.com). We would be happy to provide you a digital copy of Attachment A upon request by email to Kelly Kemper at [kkemper@taftlaw.com](mailto:kkemper@taftlaw.com) or you can download it at:

<https://www.dropbox.com/s/0ya9bn05gq6ly38/539-WOW.xlsx>.

Place: Taft Stettinius & Hollister LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: 614-334-7192  
[copyright92@taftlaw.com](mailto:copyright92@taftlaw.com)

Date and Time: 7/8/2013

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: June 14, 2013

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party)

TCYK, LLC, who issues or requests this subpoena, are:

Leon Bass, 65 E. State St. Ste 1000 Columbus, Ohio 43215  
[copyright92@taftlaw.com](mailto:copyright92@taftlaw.com)  
614-334-7192

Civil Action No. 2:13-cv-00539

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

# **Attachment A:**

**To Subpoena Duces Tecum  
Served Upon WideOpenWest**

***NOTE: A DIGITAL COPY OF THIS EXHIBIT A CAN BE DOWNLOADED AT:***

**[https://www.dropbox.com/s/0ya9bn05gq6ly38/  
539-WOW.xlsx](https://www.dropbox.com/s/0ya9bn05gq6ly38/539-WOW.xlsx)**

**Or, if you would like us to email you a copy, please contact:**

**Kelly Kemper  
[kkemper@taftlaw.com](mailto:kkemper@taftlaw.com)  
614.220.0227**



[illegible]



[illegible]

**Attachment B:  
To Subpoena Duces Tecum  
Served Upon WideOpenWest**

**Court Order**

**TCYK, LLC v. John Does 1-98  
Civil Action No.2:13-cv-00539 - U.S. Federal Court for the Southern District of Ohio  
Judge: Gregory Frost  
Magistrate: Norah King**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

TCYK, LLC,

Plaintiff,

v.

Case No. 2:13-cv-539  
Judge Frost  
Magistrate Judge King

JOHN DOES 1-47,

Defendants.

ORDER

This is a copyright action in which plaintiff alleges that defendants "conspired with other infringers on the BitTorrent network to copy and/or distribute" plaintiff's copyrighted motion picture, *The Company You Keep*. Complaint, Doc. No. 1, ¶ 11. Defendants are otherwise identified only by IP addresses. Exhibit B, attached to Complaint. This matter is now before the Court on Plaintiff's Ex Parte Application for Leave to Take Discovery Prior to Rule 26(f) Conference, Doc. No. 3 ["Plaintiff's Motion"]. In its motion, plaintiff seeks to conduct limited discovery of non-party internet service providers to determine the identities of the defendants.

The Federal Rules of Civil Procedure prohibit "discovery from any source before the parties have conferred as required by Rule 26(f), except," *inter alia*, when authorized by court order. Fed. R. Civ. P. 26(d)(1). Expedited discovery is appropriate



upon a showing of good cause. *Arista Records, LLC v. Does 1-15*, 2007 WL 5254326, \*2 (S.D.Ohio May 17, 2007). Good cause is easily established in a copyright infringement case, see *id.*, and where, as here, plaintiff has established that it cannot meet its service obligation under Fed. R. Civ. P. 4 without the requested discovery.

Accordingly, *Plaintiff's Motion*, Doc. No. 3, is **GRANTED**.

**IT IS HEREBY ORDERED** that plaintiff may serve limited, immediate discovery on the internet service providers identified in Exhibit 1 attached to *Plaintiff's Motion*, and on later-discovered or intermediary internet service providers in order to obtain the identity of each Doe defendant by serving a Rule 45 subpoena that seeks documents that identify each Doe defendant, including the name, current (and permanent) addresses and telephone numbers, e-mail addresses and Media Access Control addresses for each defendant. The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B) where applicable to educational institutions.

**IT IS FURTHER ORDERED THAT** any information disclosed to plaintiff in response to the Rule 45 subpoenas may be used by plaintiff solely for the purpose of protecting plaintiff's rights under the Copyright Act.

s/ Norah McCann King  
Norah McCann King  
United States Magistrate Judge

June 5, 2013